

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

GINA KIM, on behalf of a class consisting of
herself and all other persons similarly situated,

Cause No.

Plaintiffs,

**COMPLAINT FOR DAMAGES
CLASS ACTION ALLEGED**

vs.

COACH, INC., a Maryland corporation, and
COACH SERVICES, INC., a Maryland
corporation,

Defendants

SUMMARY

Defendant Coach, Inc. is engaged in an illegal, statewide and nationwide campaign to suppress “second hand” sales of its handbags and other products. Through this campaign, Coach is trying to force all consumers to purchase Coach products only in their expensive retail stores, rather than through online second hand online outlets such as E-Bay. Unfortunately, in its pursuit of maximum profits, Coach has employed unfair and deceptive practices and has violated state and federal law.

Without investigating the validity of its allegations, Coach wantonly accuses consumers of infringing its trademarks by selling counterfeit Coach products. Coach apparently monitors online retailers such as E-Bay, looking for ads from consumers selling second hand Coach products. In response to such ads, Coach delegates a New York law firm to launch a threatening letter to the consumer. These letters accuse the consumer of trademark infringement, threaten legal action, and demand the immediate payment of damages to Coach in “settlement” of Coach’s threats. At the same time, Coach (or its New York law firm) informs the online retailer that infringing merchandise is being sold on its website. In many cases, this causes the online

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1 retailer to involuntarily remove the allegedly infringing ad, and to disable the consumer's online
 2 account. This destroys any chance the consumer had to sell the Coach product second hand, and
 3 otherwise damages the consumer.

4 In many cases (such as that of the lead plaintiff identified here), Coach's allegations of
 5 infringement are flatly false. It appears that Coach fails to conduct even a minimally reasonable
 6 investigation into its counterfeiting claims before threatening legal action. For example, the
 7 lead plaintiff identified in this Complaint *is a former Coach employee*, who owned, and tried to
 8 sell, genuine and legitimate Coach products. It was entirely legal for her to do so. Coach's
 9 threats against her were false, reckless, and unwarranted.

10 On information and belief, many consumers have paid Coach its demanded damages to
 11 try and "make them go away," even though such consumers never tried to sell infringing or
 12 counterfeit merchandise.

13 On behalf of herself and all others similarly situated and unknown, the PLAINTIFF
 14 alleges as follows:

15 **I. NATURE OF PLAINTIFF'S CLAIMS**

16 This class action lawsuit arises on the following grounds: (1) the Washington Consumer
 17 Protection Act, RCW 19.86 *et seq.* ("CPA"), (2) Misrepresentation of Trademark Infringement,
 18 17 U.S.C., Section 512(f), (3) Defamation, and (4) Tortious interference with business
 19 expectancy.

20 **II. PARTIES**

21 1. Gina Kim is the representative plaintiff in this action. She is a resident of King
 22 County, Washington, which is within this judicial district.

23 2. The plaintiff class alleged consists of all consumers in Washington State who
 24 have, in the last three years, received a cease and desist letter from Coach or any agents of
 25 Coach, accusing them of attempting to sell infringing and counterfeit Coach products through an
 online outlet such as E-Bay, Craigslist, or other such services, where such allegation is false.

3. Defendants Coach, Inc. and Coach Services, Inc. are Maryland corporations
 having their principal office and place of business in a state other than Washington. Coach does
 extensive business in Washington State.

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1 **III. JURISDICTION AND VENUE**

2 1. The events giving rise to this claim arose in King County, Washington.

3 2. This Court has jurisdiction over this matter under 28 U.S.C. § 1331 because the
4 cases raises questions of federal law. This Court has jurisdiction over the state law claims
pursuant to 28 U.S.C. § 1367.

5 3. Personal jurisdiction over the Defendants is proper because Defendants market
6 and sell their trademarked products in this jurisdiction and because Defendants directed
7 damaging, defamatory, and tortious statements against a resident of this district.

8 4. Venue is proper in this district under 28 U.S.C. § 1391(a), (b), and (c).

9 **IV. FACTS COMMON TO ALL COUNTS**

10 1. Plaintiff is an online vendor of goods, including handbags.

11 2. Plaintiff operates a Washington-based seller account on Ebay.

12 **1. VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**

13 1. Plaintiff incorporates and re-alleges the preceding paragraphs.

14 2. Plaintiff's attempt to sale an "asset," a handbag, on Ebay constituted "trade" and
15 "commerce" under RCW 19.96.010.

16 3. In October 2010, Defendants, without conducting any reasonable investigation,
17 notified Ebay that a handbag sold by Plaintiff was counterfeit and infringed Defendants'
trademarks.

18 4. Defendants' unsubstantiated claims led to the removal of Plaintiff's
19 advertisement for sale of a handbag from Ebay and the elimination of Plaintiff's seller account.

20 5. On October 8, 2010, Defendants, through their attorney, notified Plaintiff of the
21 alleged trademark violation and demanded that Plaintiff return the handbag to Defendants and
22 pay monetary damages.

23 6. Plaintiff's handbag was not counterfeit.

24 7. Defendants statements that Plaintiff sold counterfeit products are false and
25 misleading statements of fact.

 8. The aforementioned statements disparage the goods and business of Plaintiff,
hindering commerce and adversely impacting Plaintiff's business interests.

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1 9. Defendants' accusations amount to unfair and deceptive trade practices in
2 violation of RCW 19.86.020.

3 10. Under RCW 19.86.090, Plaintiff is entitled to actual damages, treble damages,
4 and attorney's fees.

5 11. Defendants have engaged in an ongoing pattern of this conduct which has
6 damaged all members of the class.

7 **2. MISREPRESENTATION OF TRADEMARK INFRINGEMENT IN VIOLATION**
8 **OF 17 U.S.C. 512(f), AND DECLARATORY JUDGMENT**

9 1. Plaintiff incorporates and re-alleges the preceding paragraphs.

10 2. Defendants claim rights in various federal trademarks.

11 3. In October 2010, Defendants, without conducting a thorough investigation,
12 notified Ebay that a handbag sold by Plaintiff was counterfeit and infringed Defendants'
13 trademarks. This constituted a knowing, material misrepresentation of trademark infringement.

14 4. On October 8, 2010, Defendants, through their attorney, notified Plaintiff of the
15 alleged trademark violation and requested that Plaintiff return the handbag to Defendants and
16 pay monetary damages. This constituted a knowing, material misrepresentation of trademark
17 infringement.

18 5. Contrary to Defendants' accusations, Plaintiff did not infringe Defendants'
19 trademarks or violate any other law.

20 6. Accordingly, there is a substantial controversy between parties having adverse
21 legal interests of sufficient immediacy.

22 7. Plaintiff is entitled to a declaration that she has not infringed Defendant's
23 trademarks. Such a declaration is necessary and appropriate at this time so that the parties may
24 ascertain their respective rights and duties regarding the matters in dispute.

25 8. Plaintiff is entitled to other relief, including reasonable attorneys fees,
enumerated in 17 U.S.C. 512(f).

9. Defendants have engaged in an ongoing pattern of this conduct which has damaged
all members of the class.

3. DEFAMATION

1. Plaintiff incorporates and re-alleges the preceding paragraphs.

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1 2. In October 2010, Defendants, without conducting a thorough investigation,
2 notified Ebay that a handbag sold by Plaintiff on her Ebay seller account was counterfeit and
3 infringed Defendants' trademarks.

4 3. By letter dated October 8, 2010, Defendants, through their attorney, falsely stated
5 that Plaintiff's merchandise was counterfeit.

6 4. Contrary to Defendants' accusations, Plaintiff did not infringe Defendants'
7 trademarks or violate any other law.

8 5. The aforementioned statements are defamatory because they refer to Plaintiff and
9 tend to prejudice her business credit, property, and operations.

10 6. Defendants had no factual basis for stating that Plaintiff sold counterfeit
11 products.

12 7. Defendants have engaged in an ongoing pattern of this conduct which has
13 damaged all members of the class.

14 **4. TORTIOUS INTERFERENCE WITH A BUSINESS EXPECTANCY**

15 1. Plaintiff incorporates and re-alleges the preceding paragraphs.

16 2. In October 2010, Defendants, without conducting a thorough investigation,
17 notified Ebay that a handbag sold by Plaintiff was counterfeit and infringed Defendants'
18 trademarks. This constituted a knowing, material misrepresentation of trademark infringement.
19 Defendants knew that plaintiff had a valid business expectancy for the sale of the handbag.

20 3. On October 8, 2010, Defendants, through their attorney, notified Plaintiff of the
21 alleged trademark violation and requested that Plaintiff return the handbag to Defendants and
22 pay monetary damages.

23 4. This conduct intentionally interfered, induced or caused a breach of the known
24 business expectancy, causing damage to the plaintiff.

25 5. Defendants have engaged in an ongoing pattern of this conduct which has
damaged all members of the class.

V. CLASS ALLEGATIONS

1. Plaintiff seeks certification of a class as defined below.

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1 (a) **The Class:** The plaintiff class alleged consists of all consumers in
 2 Washington State who have, in the last three years, received a cease and desist letter from Coach
 3 or the agents of Coach, accusing them of attempting to sell infringing and counterfeit Coach
 4 products through an online outlet such as E-Bay, Craigslist, and other such services, where such
 5 allegation was made without basis and has harmed the consumer.

6 Excluded from the Class are (i) any judge presiding over this action and members of
 7 their families; (ii) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and
 8 any entity in which Defendant or its parents have a controlling interest and their current or
 9 former employees, officers and directors; (iii) persons who properly execute and file a timely
 10 request for exclusion from the Class; and (iv) the legal representatives, successors or assigns of
 any such excluded persons.

11 2. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this
 12 time, but on information and belief, Defendant has threatened many Class members throughout
 13 the State of Washington, making joinder of each individual member impracticable. Ultimately,
 14 the Class and members will be easily identified through Defendant's records. Plaintiff believes
 15 that the members of the Class are geographically dispersed throughout the State, and that joinder
 16 of all Class members would therefore be impracticable.

17 3. **Commonality and Predominance:** Common questions of law and fact exist as
 18 to all members of the Class and predominate over any questions affecting only individual
 19 members. Defendant has acted or refused to act on grounds generally applicable to the class,
 20 thereby making appropriate final injunctive relief or corresponding declaratory relief with
 21 respect to the Class as a whole.

22 Common questions of law and fact include but are not limited to:

23 (a) Whether Defendants threatened legal action and demanded payment of
 24 settlement damages with no basis in fact;

1 (b) Whether Defendants notified online retailers that counterfeit merchandise
2 was being sold on their website with no basis in fact;

3 (c) Whether Defendant's practices violate the CPA;

4 (d) Whether Defendant's practices violate 17 U.S.C. 512(f);

5 (e) Whether Defendant's conduct constituted defamation;

6 (f) Whether Defendant's conduct tortiously interfered with a legitimate business
7 expectancy of the Class members;

8 (g) Whether Plaintiff and the Class are entitled to relief, and the nature of such
9 relief.

10 4. **Typicality:** Plaintiff's claims are typical of the claims of the other members of
11 the Class. Plaintiff and the Class members sustained damages as a result of Defendant's uniform
12 wrongful conduct toward Plaintiff and the Class.

13 5. **Adequate Representation:** Plaintiff will fairly and adequately represent and
14 protect the interests of the Class, and has retained counsel competent to litigate this action.
15 Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses
16 unique to Plaintiff.

17 6. **Appropriateness:** This class action is appropriate for certification because class
18 proceedings are superior to all other available methods for the fair and efficient adjudication of
19 this controversy and joinder of all members of the Class is impracticable. The prosecution of
20 separate actions by individual members of the Class would impose heavy burdens upon the
21 courts and Defendant, and would create a risk of inconsistent or varying adjudications of the
22 questions of law and fact common to the Class. The damages suffered by the individual
23 members of the Class will likely be small relative to the burden and expense of individual
24 prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it
25 would be virtually impossible for the individual members of the Class to obtain effective relief
from Defendant's misconduct. Even if members of the Class could sustain such individual

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litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

7. **Policies Generally Applicable to the Class:** This class action is also appropriate for certification because Defendant has acted on grounds generally applicable to the Class, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making final injunctive relief appropriate with respect to the Class and Subclasses as a whole. Defendant's conduct challenged herein apply and affect members of the Class uniformly and Plaintiff's challenge of that conduct hinges on Defendant's conduct with respect to the Class as a whole, not on facts or law applicable only to Plaintiff.

8. **Reservation:** Plaintiff reserves the right to revise the Class definition and Class allegations based upon information learned through discovery.

VI. PRAYER FOR RELIEF

Plaintiff prays for a judgment against Defendants as follows:

1. For an order certifying this case as a class action pursuant to FRCP 23, and for an order appointing Plaintiff as Class representative and the undersigned counsel as class counsel;
2. That the defendant be temporarily and permanently enjoined from continuing to engage in the conduct described in this Complaint;
3. Under Count 1, class wide damages, treble class wide damages, and reasonable attorney fees and costs for the class as a whole;
4. On Count 2, class wide damages, and reasonable attorney fees and costs for the class as a whole; and that a declaratory judgment be entered declaring that Plaintiff did not infringe any valid and enforceable trademarks owned by Defendants and that Defendant's conduct violated federal law;

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1 5. On Count 3, class wide damages, and an injunction prohibiting Defendant from
2 continuing to disparaging the goods, services, and business of Plaintiff class members;

3 6. On Count 4, class wide damages;

4 7. For an order requiring Defendant to disgorge all profits, benefits, and other
5 compensation obtained from the conduct described in this Complaint;

6 7. That Plaintiff and the Class be awarded their costs and expenses incurred in
7 connection with this action, including attorneys' fees, and pre-judgment and post-judgment
8 interest; and

8 8. For any other relief that the Court deems just and proper.

9 **VII. JURY DEMAND**

10 Plaintiff demands a trial by a jury of twelve of all claims so triable.

11 Dated this 8th day of February, 2011

12 Respectfully submitted,

13 Van Eyk & Moore, PLLC.

14 
15 _____
16 Jason B. Moore, WSBA No. 41324

17 Van Eyk & Moore, PLLC

18 Jay Carlson, WSBA No. 30411

19 Carlson Legal

20 Christopher Carney, WSBA No. 30325

21 Carney Gillespie & Isitt PLLC

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